



January 19, 2001

Mr. Mark Dempsey  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2001-0200

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143412.

The City of Garland (the "city") received a request for the personnel files of two city police officers. You claim that portions of the requested information, which you have highlighted, are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. This right protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Financial information concerning an individual is generally protected by a common law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). However, as information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest, the doctrine of common law privacy does not generally protect this type of information. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). Resolution of a claim that a financial transaction between an individual and a governmental body is protected by the common law right of privacy hinges on the role that the information plays in the relationship between the individual and the governmental body. For example, a public employee's participation in a voluntary investment program or deferred compensation plan that his or her employer offers, but does not fund, is not considered a financial transaction between the individual and the governmental body; therefore, information regarding such participation is protected by the common law right of privacy. Open Records Decision No 545 at 3-5 (1990).

Information that reflects a voluntary financial transaction by an employee must be withheld under section 552.101 of the Government Code in conjunction with the common law right of privacy.

Section 552.101 also excepts information made confidential by statute. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984).

Section 552.117(2) of the Government Code requires you to withhold information pertaining to a peace officer if the information relates to the home address, home telephone number, social security number, or reveals whether the peace officer has family members. Such information in the submitted materials must be withheld under section 552.117.

Section 552.130 of the Government Code governs the release and use of information obtained from motor vehicle records. It provides in relevant part as follows:

(a) Information is excepted from [required public disclosure]  
if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Texas driver's license numbers, VIN numbers, and the license plate numbers must be withheld pursuant to section 552.130. Therefore, the Texas drivers' license numbers in the submitted materials must be withheld under section 552.130.

You have highlighted the portions of the submitted materials that you contend are excepted from disclosure, and labeled the items of information to indicate the exception which you contend applies. We agree that the information that you have designated must be withheld, although the applicable exception is not always designated. We have marked items of information where the grounds for withholding the information requires clarification or correction. All of the information which you have designated must be withheld and the remaining information released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

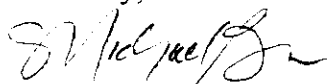
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns

Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 143412

Encl: Submitted documents

cc: Mr. Donald H. Brandt, Jr.  
Attorney and Counselor at Law  
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(w/o enclosures)